

Regulations (FAR, 14 C.F.R.).² We deny the appeal.

The Administrator's order of revocation is based on a number of alleged incidents during the time period February 1990 to September 1994. The incidents, all but two of which (see paragraphs 45 and 47 of the complaint) involved respondent's operation of a Falcon 900, can be summarized as follows:

1. 2/16/90 -- takeoff from Arlington, WA when the runway was covered with excessive snow (complaint paragraphs 5-10).

2. 7/2/91 -- a low pass over the Arlington, WA airport (paragraphs 11-18).

3. 8/31/91 -- designating an unqualified second-in-command during a passenger-carrying flight, allowing him to attempt an instrument approach at Arlington, and taking the controls and landing the aircraft contrary to the published approach procedure (paragraphs 19-28).

4. 4/1 and 4/3/92 -- acting as pilot-in-command without the required, current first or second class medical certificate (paragraphs 29-30).

5. 12/19/92 -- designating an unqualified second-in-command during two passenger-carrying flights, failing to record the flight times for these two flights in the aircraft log, and directing that the flights not be reported, causing false entries (paragraphs 31-37).

6. 2/6/93 -- a low pass at excessive speed in the vicinity of Mt. Vernon, WA (paragraphs 38-43) (dismissed by law judge, and not appealed by the Administrator).

7. 5/2, 5/10, and 5/11/93 -- acting as pilot-in-command without the required, current first or second class medical certificate (paragraphs 44-45).

8. 8/93 -- failing to use a checklist, leading to a gear-up landing of a float plane (paragraphs 47-52).

²A copy of the order of revocation is attached. The law judge affirmed all the Administrator's charges with the exception of those set forth in paragraphs 38-43 of the complaint.

9. 3/9/94 -- on two separate occasions, designating an unqualified second-in-command during two passenger-carrying flights (paragraphs 53-57).

10. 9/20 and 9/21/94 -- acting as PIC on three instrument flight rules flights (France to Greece to Iceland to the U.S.) without having logged the required three takeoffs and landings within 90 days, and continuing the flight when, prior to takeoff, one of the flight management systems, required to be operational, failed (paragraphs 58-64).

11. 3/29/90, 3/20/91, 3/30/92, and 2/28/94 -- applying for renewal of inspection authorization, when he had not performed, supervised, or approved, the inspections described in the applications, thereby intentionally falsifying his applications (paragraphs 66-70).³

Respondent argues: that two of the witnesses for the Administrator were unreliable, and their testimony is fatally tainted; that none of the violations he admitted were flagrant violations; and that other of the alleged violations have not been proven. We have carefully reviewed the law judge's decision and find that it thoroughly reviews the evidence and we adopt its reasoning and conclusions. Respondent's arguments do not convince us either that the Administrator was unjustified in pursuing his case against respondent or that considerable discussion beyond that provided by the law judge is necessary to affirm the initial decision.

Although respondent offers extensive argument against the testimony of Kelly Barnett and Michael Stewart, who had both worked with respondent at the relevant times and were percipient

³In addition, paragraphs 71 and 72 charge that respondent lacks the good moral character required of the holder of an airline transport pilot certificate and a ground instructor certificate.

witnesses to certain allegations, the law judge was well aware of the potential bias and credibility issues, and discussed them at length. Tr. at 524-526, 530. That the law judge carefully weighed the evidence with regard to each allegation is demonstrated both in his lengthy opinion and in his dismissal of one of the low flight charges. And, the fact that the law judge dismissed one charge for which Kelly Barnett testified for the Administrator does not warrant or require dismissal of other charges on which Barnett testified. Respondent's legal arguments offer no basis to find the testimony of either person incredible and therefore dismiss the relevant charges, especially where there was other eyewitness testimony. Further, respondent's appeal exaggerates the facts to the point of mischaracterization, in his attempt to show Barnett to be an unreliable witness.⁴

There is also more than sufficient evidence to affirm all of the other findings respondent challenges on legal, as opposed to credibility grounds.⁵ Respondent allowed unqualified co-pilots to pilot the aircraft on passenger-carrying flights, contrary to what should be obvious safety concerns. His effort to term the flights training flights is not supported by the pilots who allegedly underwent that training. Nor does calling a passenger

⁴Respondent's cross-examination and 5th Amendment arguments are persuasively countered in the Administrator's reply (7-11).

⁵The charge related to the takeoff in snow is challenged on both credibility and legal grounds. As to the latter, respondent is incorrect in arguing that there was no precipitation limitation in the aircraft's prescribed documentation.

a "traffic spotter" make him a crewmember (and, thereby, legitimize the flight). As the law judge noted, under that theory, a child could be a crewmember, clearly an inappropriate result.

Respondent also flew a number of flights without the required medical certificate. His argument that these flights were "incidental" to his employment and, therefore, the FARs require only a third class medical, is specious. Piloting this aircraft was respondent's employment, whether or not there were passengers or cargo aboard. Respondent offers no evidence to support a finding that, as a private pilot, he was authorized to fly this aircraft. Indeed, it was an unauthorized flight that he attempted to hide from his employer that led to another of the violations.⁶

Respondent's behavior, as demonstrated on this record, reflects a cavalier disregard of the regulations. In addition to the preceding matters, which establish a pattern of abuse, the European flights as well demonstrated his willingness to ignore currency and equipment requirements.⁷ His applications for

⁶We reject respondent's argument, with regard to that violation finding, that Administrator v. Alvarez, 5 NTSB 1906, 1907 (1987), warrants dismissal because there can be no falsification of records where there is no record entry. As the Administrator notes in his reply, Kelly Barnett made an entry perpetuating an incorrect aircraft log. Respondent "caused" that incorrect information to be provided.

⁷Respondent argues on appeal that these European flights, as well as the gear-up landing in the float plane, both of which violations he admitted, are not flagrant, willful, or a threat to air safety. Individually, they may not warrant revocation -- this
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Inspection Authorization based on attestations that he had been directly involved in the progressive inspection of the Falcon cannot be excused as error on the part of the FAA in not asking him what his role actually had been. If respondent was confused, it was his responsibility and obligation to seek advice. Again, this violation demonstrates a willingness to ignore or evade regulatory requirements that establishes that respondent lacks the qualifications to hold his certificates.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The emergency order of revocation, as modified by the law judge, and the initial decision, are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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we need not decide. But, in the context of all the violations established, they demonstrate a pattern of regulatory disregard and carelessness. We specifically reject respondent's notion that the European flights without the required currency were not willful, and that both those flights and the gear-up landing were not a threat to air safety.